EXCLUSION OF ALIENS AS A JUDICIAL QUESTION. — The power to exclude aliens is one of the essential attributes of sovereignty. It is no longer questioned that there is nothing in the Constitution that forbids the full exercise of this power by the United States: aliens either may be refused admission entirely or may be expelled from the country, after having been once admitted.[1] But it is not always easy to decide what branch of the government is entitled to exercise this power. To be sure, if it is conceded that the person in question is an alien, the case is clear. The power to exclude aliens is an incident to the power to regulate commerce with foreign nations, vested in Congress: it is political in its nature, and is no part of the power vested by the Constitution in the courts.[2] The exclusion proceedings are, in a sense, judicial, in that they involve the ascertaining of whether the person has violated the exclusion laws, but this does not prevent them from being put wholly into the hands of administrative officers, as the proceedings are simply a means of carrying out a power granted to Congress.[3]

But if it is disputed whether the person is, in fact, an alien, a much more difficult question is raised. No citizen of the United States can be refused admission or expelled from the country, except as a punishment for crime.[4] And if a person, restrained of his liberty on the ground that he is an alien, applies to the courts for release, maintaining that he is a citizen, the case seems clearly to be one "arising under the Constitution," to which the judicial power extends. In a recent case, the court follows this line of reasoning, but holds that the Constitution is satisfied if the question of what facts constitute citizenship is left to the courts, while administrative officers have authority to determine conclusively whether these facts exist. *In re Sing Tuck*, 126 Fed. Rep. 386 (Circ. Ct., N. D. N. Y.). The decision is in line with a late case in the Supreme Court,[5] but it seems, as a matter of logic, that the finding of the facts upon which a right of this nature depends is as much a judicial matter as the determining of the law. It is true that there are several cases apparently analogous. Thus, the value of goods passing through the custom house may be conclusively fixed by the appraisers:[6] the officers of the Land Department may decide whether a claimant of part of the public domain has complied with the statutory requirements.[7] But in these cases the officers act simply as the agents of Congress: they are only doing what Congress might have done by express enactment, by virtue of its power to regulate commerce and the public lands. In the present case, on the contrary, the right to enter and remain in the United States is one that Congress could not take away. It is hard to see how executive officers, deriving all their authority from Congress, can determine the existence of facts upon which depends a constitutional right, which Congress is powerless to disturb. If they may do so in this case, why may they not do the like in any controversy between the United States and an individual, except when prevented by the express words of the Constitution? But while the result seems thus objectionable on prin-

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[1] Chae Chan Ping *v.* United States, 130 U. S. 581.
[2] Fong Yue Ting *v.* United States, 149 U. S. 698.
[3] Japanese Immigrant Case, 189 U. S. 86.
[4] Lee Sing Far *v.* United States, 94 Fed. Rep. 834.
[5] Chin Bak Kan *v.* United States, 186 U. S. 193.
[6] Hilton *v.* Merritt, 110 U. S. 97.
[7] Quimby *v.* Conlan, 104 U. S. 420.

ciple, the exclusion law could hardly be enforced if the decision were otherwise, and an appeal to the courts allowed in every case. The matter is one peculiarly requiring the summary exercise of executive power.

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THE REQUIREMENT OF PRIVITY IN INTERPLEADER. — As a general rule, a person beset by adverse claims for the same thing, willing to relinquish it, but in doubt as to who is entitled, may turn the *res* into court and require the claimants to litigate their claims with each other. The wisdom of the rule is apparent since it prevents the vexation of a third party by two suits when the real issue is between the two claimants. The courts, however, have displayed a tendency to narrow its application by imposing some requirements that seem technical and scarcely justified. One of these is the requirement of privity. As understood with reference to interpleader, privity exists if one of the claimants claims through the other or if both claim from a common source. Privity is clearly established where the connection arises by assignment, and, while not always recognized, it is also generally held that the requirement is met if one claimant is entitled as a constructive *cestui que trust* of the other.[1] A recent Illinois case is to be explained on that ground. *Byers* v. *Samson-Thayer Commission Co.*, 19 Chic. L. J. 753 (Ill., App. Ct.).

It is to be noticed that the question of privity cannot easily arise except in a case where the stakeholder has in his possession a specific chattel. In the case of a debt or obligation, the claimants must necessarily claim through the obligation itself, which ensures privity. A situation may indeed arise in which the claims of the various parties, though different in nature, are nevertheless mutually exclusive. For example, A, claiming to be entitled on a life insurance policy, is given a note in settlement. B then sues the company, claiming to be the beneficiary entitled. In such a case, while it might well be held that a bill in the nature of interpleader should be allowed, a bill of strict interpleader cannot lie,[2] not because of want of privity, but because it is the very essence of interpleader that there must be a dispute as to the same *res*. It follows that the question as to the requirement of privity most often arises when a bailee brings a bill of interpleader.

While there are some cases in which a bailee has been allowed to interplead adverse claimants although no privity existed,[3] yet by the weight of authority it is required.[4] The requirement is believed to have been made on the assumption that a bailee cannot deny his bailor's title. If this assumption were true, as it undoubtedly was in the early law, the fact might afford a reason why interpleader should be denied the bailee, for, since he would be liable to the bailor at all events, his obvious course would be to give the *res* in question to the bailor and defend himself against the other claimant. The more just rule would be to require the bailor, who has placed the bailee in that position, to assume the burden of litigating the actual right to the chattel. If then the bailor failed to establish his right to

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[1] Platte Valley Bank *v.* Nat'l Life Stock Bank, 155 Ill. 250. *Contra*, Third Nat'l Bank *v.* Skillings Lumber Co., 132 Mass. 410; German Sav. Bank *v.* Friend, 20 N. Y. Supp. 434.

[2] Slaney *v.* Sidney, 14 M. & W. 800.

[3] Roberts *v.* Bell, 7 E. & B. 323.

[4] First National Bank *v.* Bininger, 26 N. J. Eq. 345.